IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 56

PENNSYLVANIA RAILROAD COMPANY AND BROTHERHOOD OF RAILROAD TRAINMEN,

Petitioners,

vs.

N. P. RYCHLIK, INDIVIDUALLY AND ON BEHALF OF AND AS REPRESENTATIVE OF OTHER EMPLOYEES OF THE PENNSYLVANIA RAILROAD,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE.

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Dated at Toledo, Ohio, this
28th day of September, 1956.

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The Railway Labor Executives' Association respectfully moves the Court for leave to file a brief as *amicus curiae* in the above entitled action, consent to the filing of such brief having been requested from all parties hereto, and having been refused by the respondent. In support of such motion applicant represents to the Court as follows:

The Railway Labor Executives' Association is a voluntary unincorporated association, with which are affiliated the following standard international railway labor organizations:

American Train Dispatchers' Association
Brotherhood of Locomotive Firemen and Enginemen
Brotherhood of Maintenance of Way Employes
Brotherhood Railway Carmen of America
Brotherhood of Railroad Signalmen of America

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood of Railroad Trainmen
Brotherhood of Sleeping Car Porters
Hotel & Restaurant Employees and Bartenders International Union
International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers, Helpers, Roundhouse & Railway Shop Laborers
International Organization Masters, Mates & Pilots of America
National Marine Engineers' Beneficial Association
Order of Railway Conductors and Brakemen
Order of Railroad Telegraphers
Railway Employes' Department, AFL-CIO
Railroad Yardmasters of America
Sheet Metal Workers' International Association
Switchmen's Union of North America

The principal office of said Association is located at 401 Third Street, N.W., Washington 1, D. C.

The foregoing organizations affiliated with the Railway Labor Executives' Association represent, for purposes of collective bargaining under the Railway Labor Act, more than one million railroad employees. Each of said affiliated organizations is a party to collective bargaining agreements between it and nearly every railroad in the United States, governing the rates of pay, rules and working conditions of said employees. Said organizations are under a statutory duty to exert every reasonable effort to make and maintain such agreements and to settle all disputes with respect to their interpretation or application.

The issues in this case are of direct and vital concern to these organizations. Practical nullification of the benefits intended by Congress in its removal of previous statutory inhibitions against union security agreements is

threatened. Also at stake is the ability of these organizations to continue to fulfill their aforementioned statutory duties, through utilization of the procedures for settlement of disputes and grievances which were established by the Railway Labor Act in an effort to obviate the constant industrial strife which prevailed when the only alternatives for resolving such matters were economic warfare or vexatious and prohibitive litigation.

The immediate question involved is that of determining the status of an organization under Section 2, Eleventh (c) of the Railway Labor Act, when membership in such organization is relied upon to exempt an employee in engine, train, yard or hostling service from the requirement of membership in the organization which represents his craft or class. More specifically, the adequacy of the administrative method provided by the statute for establishing such status, and the availability of resort to court action for such determination, are among the questions involved. And, as an outgrowth of the consideration of these problems by the court below, grave doubt has been cast upon the future effectiveness of the method prescribed by Congress for expeditious settlement of railroad labor disputes through submission to bi-partisan boards of adjustment.

It is thus apparent that the decision of the court below carries implications reaching far beyond the question of whether the respondent has succeeded in exempting himself from the requirement of membership in the organization which is his certified statutory bargaining representative. The whole statutory scheme of disputes handling through specialized administrative tribunals, with a minimum of intervention by the courts, is jeopardized.

While the parties to the litigation undoubtedly will capably present the specific issues involved in this particular case, we believe that these broader aspects of the prob-

lem justify the independent presentation of the views of an organization which may fairly be said to represent railroad labor as a whole.

Respectfully submitted,

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Preliminary Statement

The facts involved and the specific questions presented for review will undoubtedly be analyzed in detail in the briefs of the parties, and we shall accordingly refer to them only insofar as may be necessary to a discussion of the broader issues with which we are primarily concerned.

Briefly, the respondent N. P. Rychlik sought to escape the obligation of membership in the Brotherhood of Railroad Trainmen (hereinafter referred to as "B.R.T."), the certified representative of his craft, by reliance upon his membership in another organization, United Railroad Operating Crafts (hereinafter referred to as "U.R.O.C.").

The union shop agreement between petitioner The Pennsylvania Railroad Company and the B.R.T. provided that the requirement of membership in the latter should not be applicable to employees ". . . who maintain membership in any one of the other labor organizations, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employees of a craft or class in engine, train, yard or hostling service . . .".[1] The agreement further provided for a system Board of Adjustment to handle disputes arising under it. The Board was composed of two members appointed by the Pennsylvania and two by the B.R.T., and the agreement provided that a decision by a majority of the Board should be "final and binding", and that deadlocks would be submitted to a neutral arbitrator to be selected by the National Mediation Board, "whose decision as to whether or not the employe has complied with the provisions of this agreement shall be final and binding." (R. 15-16.)

The System Board held that respondent's membership in U.R.O.C. did not constitute compliance with the Union Shop Agreement (R. 17-18), and he was accordingly discharged from his employment in accordance with the terms of the agreement.

Although various contentions were advanced by respondent in his complaint attacking the legality of his discharge, our primary concern is with the points dealt with by the Court of Appeals below, and the issues presented by the petitioners here. As we understand its ruling, the court below has held that the District Court should have entertained jurisdiction of the case on the merits, and made its independent determination of whether respondent's membership in U.R.O.C. complied with the Union Shop Agreement, because (1) the machinery provided in Section 3,

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[1]The language of the agreement paraphrases that of Section 2, Eleventh (c) of the Railway Labor Act.

First (f) of the Railway Labor Act was not an adequate remedy by which respondent might seek to establish that U.R.O.C. was an organization in which membership would exempt him from the requirement of membership in B.R.T., and (2) the decision of the System Board as to the status of U.R.O.C. could not preclude judicial review of the question because of presumptive bias resulting from the make-up of the board.

The principles thus espoused by the court below are a source of great concern to the Railway Labor Executives' Association, on whose behalf as *amicus curiae* this brief is presented, and to its affiliated organizations. The overall holding, we believe, carries with it such a potential of continuing and harassing litigation as to seriously threaten the practicability of enforcing union security agreements in the railroad industry; and the second aspect of the decision noted above beclouds the future of the whole concept of final and binding settlement, by expert administrative tribunals, of the "minor disputes" which, prior to the establishment of adjustment board machinery, had been a major source of strife in the industry.

We believe that the court below erred on both aspects of its holding. But we also feel that if it had been decided, correctly as we contend, that the proceeding specified in Section 3, First (p) was the proper and exclusive method for establishing the status of U.R.O.C., then the second and perhaps more disturbing aspect of the holding, dealing with reviewability of the System Board's decision, might well have been obviated or at least greatly simplified. We shall accordingly discuss first the question of the method for determining an organization's status within the meaning of Section 2, Eleventh (c) of the Railway Labor Act (the "national in scope" issue), and in the light of that discussion will then refer to the question of the necessity

for and scope of judicial review of adjustment board awards.

SUMMARY OF ARGUMENT

Stated in summary form, the propositions which will be argued in this brief are as follows:

I. In Section 3, First (f) of the Railway Labor Act, an administrative procedure is provided for settling disputes over the status of a labor organization as national in scope and organized in accordance with the Act, within the meaning of Section 2, Eleventh (c). Such procedure is the exclusive method for settling such disputes. It complies with the requirements of fair play in the composition of the tribunal provided for and the procedure to be followed.

No individual rights are contravened by a construction of the statute as permitting execution of union security agreements which limit the employee's choice of union membership to either the certified bargaining agent, or an organization which has established its "national in scope" status by a Section 3, First (f) proceeding. Such construction will conform to the general legislative objective of minimizing litigation and providing expeditious administrative handling of railroad labor disputes, and will benefit rather than harm individual employees by affording complete assurance as to the status of organizations which they may contemplate joining in lieu of the certified bargaining agent.

II. There is no justification for departure from the usual standards of finality of the decisions of administrative tribunals, in the case of a finding by an adjustment board on the purely ministerial inquiry as to whether a particular organization has qualified itself, through resort to

the Section 3, First (f) procedure, as being national in scope and organized in accordance with the Railway Labor Act. It is not here suggested that U.R.O.C. ever qualified through such procedure. As to organizations which may have done so, a board's finding that they had *not* so qualified could be remedied within the confines of the limited review accorded decisions of such tribunals upon a showing of fraud or other gross irregularity.

ARGUMENT

I. THE RAILWAY LABOR ACT PROVIDES AN ADEQUATE AND EXCLUSIVE ADMINISTRATIVE PROCEDURE FOR ESTABLISHING THE STATUS OF AN ORGANIZATION AS NATIONAL IN SCOPE AND ORGANIZED PURSUANT TO THE ACT.

The Procedure Established and its Adequacy.

As we understand the reasoning of the decision below, the finding of jurisdiction in the District Court to review the System Board's decision against respondent is predicated upon the absence of any adequate alternative administrative procedure for securing a determination of the status of U.R.O.C. If the court below erred in this conclusion, as we believe it did, then the other phase of its ruling, with respect to presumptive invalidity of the System Board's finding, and the availability of court review on the merits, is without foundation.

When Congress adopted the 1951 amendments to the Railway Labor Act (Section 2, Eleventh) which removed the previous statutory prohibitions against union shop agreements (Section 2, Fourth and Fifth), it imposed certain conditions upon the validity of such agreements, including those set forth in Section 2, Eleventh (c) with which we are here concerned. The paragraph in question provides in part as follows:

"The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in Section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; . . . ."

The purpose of this provision was to meet a problem that would otherwise confront employees in the so-called operating crafts, where seniority may be held in two different crafts, and employees are moved from one craft to another with considerable frequency, due to fluctuations in the requirements of the service. Absent such a condition in the union shop agreements, an employee might find himself forced either to change his union affiliation each time he was moved from one craft to another, or to maintain continuous membership in two organizations. This problem is for the most part unique to the operating employees, and no similar condition was imposed with respect to union shop agreements in the non-operating classes.[2]

The language of the above-quoted portion of Section 2, Eleventh (c), describing the organizations in which mem-

[2]Subparagraph (c) was added to Section 2, Eleventh after the bill proposing the union shop amendment had reached the floor of the Senate, no such condition having been included when the amendment was before the Congressional committees. It was offered on the floor on December 7, 1950, by Senator Hill (96 Cong. Rec. 16260, 81st Cong. 2nd Session), and replaced a proposal which the Senator had offered on September 23, 1950 (96 Cong. Rec. 15735, 81st Cong. 2nd Session) to meet the same problem. On both occasions Senator Hill explained the peculiar situation of the operating employees which the condition was designed to meet, and he informed the Senate that the last amendment, containing the language which was finally adopted, had been agreed to by the railroad labor organizations. There appears to have been no discussion of the question of the proper procedure for establishing the status of an organization as national in scope within the meaning of paragraph (c).

bership would satisfy a contractual requirement of union membership, is substantially the same as that used in Section 3, First (a) of the Act in specifying which organizations would be entitled to participate in the selection of the labor members of the National Railroad Adjustment Board —i.e., "... such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of Section 2 of this Act." And in Section 3, First (f), Congress specifically provided for a fair and expeditious method of settling any dispute as to whether an organization met those qualifications. We submit that there is no reasonable basis for the conclusion that where the same qualifications were specified in another, subsequently enacted provision of the statute, Congress intended that some different procedure than that already provided for should be followed in establishing the existence of those qualifications.

In arriving at such a conclusion, the court below in no way questioned the essential fairness of the Section 3, First (f) procedure,[3] but based its decision to a large extent upon what is, to us, the completely inexplicable and erroneous view that Section 3, First (a) established a different, more extensive, set of qualifications than those specified in Section 2, Eleventh (c). Thus, the court said (R. 42-43):

> "... when a union applies to be chosen as an elector there are other conditions that it must satisfy besides being 'national in scope' .... As we read Sec. 152, Eleventh, (c), their jobs are dependent *only upon whether the 'competing' union is in fact 'national in scope'* ...." (Empha is supplied.)

[3]Two stages of this procedure are specified, being first, submission of the matter to the Secretary of Labor who decides in the first instance whether in his judgment the claim has merit, and second, if the Secretary decides that it has merit, a final and binding decision by a board of three members, one to be appointed by the organizations which have already qualified to participate in the Adjustment Board machinery, one by the organization seeking to become qualified, and the third or neutral party to be designated by the National Mediation Board.

The fact is, of course, that Section 2, Eleventh (c) describes the qualifications in the following language: ". . . labor organizations national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services . . ." Section 3, First (a) describes the qualifications for participation in the Adjustment Board machinery as follows: ". . . such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of Section 2 of this Act." Clearly the latter paragraph provides for no qualifications over and above those specified in the former.[4]

We can only submit that the court's reading of Section 2, Eleventh (c) was inaccurate, and that on the face of the statute it calls for the same qualifications, no more and no less, as those specified in Section 3, First (a).

No Individual Rights Jeopardized

In addition to its conclusions with respect to the adequacy of the Section 3, First (f) procedure, discussed above, the court below rejected it as an exclusive method of establishing the status of an organization under Section 2, Eleventh (c) on the ground that it might not be readily available as an "adequate remedy" to the individual employee, and that "the Act should be construed to grant them the personal privilege of proving their right before an impartial tribunal." (R. 43.)

The repeated references of the court below to rights

[4]It would appear that the court below may have been misled in its consideration of the qualifications prescribed by Section 3, First, by the fact that it directed its attention to subparagraph (f), which prescribes the administrative machinery for settling disputes over an organization's qualifications, instead of to subparagraph (a) which specifies the qualifications themselves. Thus the phrase "otherwise properly qualified to participate in the selection of the labor members", with which the court was concerned (R.43), appears in the last sentence of subparagraph (f), and can only have reference to the "national in scope" requirement of subparagraph (a).

and remedies of the individual employee are not supported by any clear specification of the source of such individual rights in connection with the matter at issue. But we think it is clear that the 1951 amendments to the Act, designed to remove *pro tanto* certain pre-existing statutory prohibitions against union security agreements, were not intended to create individual rights of the sort envisaged by the lower court. In other words, there is no basis for assuming that the individual employee's rights are jeopardized if he himself is not permitted to initiate proceedings looking towards the qualification, under Section 2, Eleventh (c), of an organization which he wishes to join instead of his certified bargaining agent.

As we view it, the individual's right, if there be such, is simply to be exempt from the requirement of membership in the organization holding the union shop agreement if he is a member of another organization *which already has established* its qualifications under Section 2, Eleventh (c). And since the statute itself is the source of this right of exemption, we cannot share the view of the court below that the existence of the right compels a construction of the Act which would enlarge the scope of the exemption to include membership in an organization as yet unqualified, but which the individual hoped to be able to establish as qualified through some future procedure or litigation.

No constitutional questions were raised in the complaint or made the basis of the decision below. In the case of *Pigott v. Detroit, Toledo & Ironton Railroad Company*, 221 F. (2d) 736, cert. den. 350 U.S. 833, where the same questions were involved and decided contrary to the ruling of the court below, the Court of Appeals for the Sixth Circuit stated (p. 742) that no substantial constitutional question was presented, and that there was no abuse of discretion by the District Court in denying a belated motion to raise constitutional questions and have them decided by a

three-judge court. Moreover, the absence of any constitutional obstacle would seem to be established by this Court's recent decision in *Railway Employes' Dept., A.F.L. v. Hanson*, ... U.S. ...., 100 L. Ed. (Adv.), p. 633. In this connection, it might be pointed out that the conditions imposed by Section 2, Eleventh (c) are limited to the specified operating crafts, no such exemption from the requirement of membership in the contracting union having been afforded the non-operating groups such as those involved in the *Hanson* case.

Finally, it should perhaps be noted that what is really at stake here is not any "right to work" or freedom from discharge on the part of the individual. Respondent's decision to terminate his membership in the B.R.T. was purely voluntary on his part. He elected to take his chances as a member of U.R.O.C. even though it had not qualified under Section 2, Eleventh (c). The fact that he may have relied on ultimately obtaining a ruling that the courts had jurisdiction to decide on the status of U.R.O.C. under that provision, does not compel a decision upholding such jurisdiction.

As the District Court pointed out in *Alabaugh v. Baltimore & Ohio R.R. Co.*, 125 F. Supp. 401 (aff'd 222 F. (2d) 861; cert. den. 350 U.S. 831), respondent "gambled heavily" by voluntarily terminating his membership in the B.R.T. He need not have done so. As the District Court pointed out in the *Pigott* case, he should have insisted that U.R.O.C. establish its status without question, or have protected his interests by retaining his membership in the B.R.T. (See *Pigott v. Detroit, T. & I. R. Co.*, 116 F. Supp. at p. 956.) He could still have joined U.R.O.C. without jeopardizing his position so long as he did not forfeit the protection of Section 2, Eleventh (a) of the statute by failing to tender his dues and uniformly required assessments to the B.R.T.

Withdrawal of Railroad Labor Disputes from the Courts.

This court has long recognized the overall Congressional policy favoring the withdrawal of labor disputes in the railroad industry from the arenas of court litigation, and the substitution therefor of specialized administrative tribunals for disposing of disputes with a minimum of delay and expense. The policy was aptly summed up in the case of *General Committee, B.L.E. v. Missouri-K.-T.R. Co.*, 320 U.S. 323, where the Court said:

> "Congress has been highly selective in its use of legal machinery . . . . The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate." (P. 333.) . . .
>
> "In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals." (P. 337.).

We have here a case where Congress has provided a particular administrative procedure as described in Section 3, First (f) of the Act. The situation is similar to that under consideration in the companion cases of *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239, and *Order of R. C. of A. v. Southern R. Co.*, 339 U.S. 255, where it was held that the creation of the National Railroad Adjustment Board operated to withdraw from the courts jurisdiction over the "minor disputes" which had been placed within the Board's jurisdiction. The same considerations compel the conclusion that the courts are precluded from exercising jurisdiction over the instant dispute by the existence of administrative machinery created to resolve the specific questions presented.

The chaotic situation that would prevail if these questions were left to the courts is not difficult to envisage.

The situation of the individual employee, for whom the court below expressed such concern, would be far more tenuous if he had to rely on being able to establish the status of the organization whose qualifications were questioned by successful prosecution of a court action, instead of acting on the secure knowledge that would follow a Section 3, First (f) procedure establishing on a national level its right to participate in the administrative procedure of the National Railroad Adjustment Board. A court decision would necessarily be a temporal thing, declaring the status of the organization only upon the basis of evidence as to the current situation of the organization with respect to the number of its members and their geographical distribution, contracts held and other activities conducted by it, and such similar factors as a court might consider. Such factors can and do change from month to month and year to year. Ordinary principles of *res judicata* would not make last year's court decision controlling in this year's suit brought by another employee or group of employees; and of course various courts, proceeding on the records made before them, could and probably would arrive at conflicting decisions regarding an organization's status at any given time. By contrast, eligibility to participate in the Adjustment Board machinery, once established, would continue until challenged and disaffirmed by a subsequent Section 3, First (f) proceeding, and could be relied upon by employees of all railroads throughout the country.

Such stability would similarly inure to the benefit of carriers and unions by enabling them to administer union shop agreements without being subjected to the continuing litigation that would inevitably attend adoption of the principles announced by the court below.

Another anomalous situation was suggested, and left without satisfactory solution, by the Court of Appeals itself, when it considered the possible effect of court decisions in actions such as this upon the rights of an organization under Section 3, First (a) to participate in the Adjustment Board machinery. (R. 43-44.) Surely confusion would be rampant should different conclusions be reached by the courts and the tribunals specified in Section 3, First (f), on the question of whether a particular organization was national in scope.

With the well-established Congressional policy of keeping litigation in the railroad labor field at a minimum, the absence of expression from Congress that disputes such as this should be submitted to the courts, the provision in the statute of administrative machinery specifically designated for their handling, and the advantages to all concerned of such administrative handling, we submit that the only reasonable conclusion to be reached is that the administrative procedure is the exclusive method for settling these disputes and that the courts are without jurisdiction.

II. THERE IS NO BASIS FOR DEPARTURE FROM THE USUAL STANDARDS OF ADMINISTRATIVE FINALITY IN THE CASE OF AN ADJUSTMENT BOARD FINDING AS TO WHETHER AN ORGANIZATION HAS ESTABLISHED ITS STATUS IN A PROCEEDING UNDER SECTION 3, FIRST (F).

As is evident from the cases that have been and undoubtedly will be cited to the Court and analyzed by the parties, there has been considerable disagreement as to whether the courts, adjustment boards, system or national, or the board of three provided for by Section 3, First (f), should be resorted to in establishing a union's qualifications under Section 2, Eleventh (c). In the foregoing portion of this brief we have shown that the board of three is

the proper and exclusive tribunal for determination of these matters. We have also pointed out that it is not until after the board of three has acted, and the organization's eligibility[5] to participate in the National Board's administrative machinery has been established, that the individual employee may utilize his membership in that organization to exempt himself from the requirement of membership in the contracting union.

Under these circumstances, it is apparent that the basis for the concern of the court below over the availability and scope of judicial review of the System Board's decision against respondent, and the effect thereon of the presumptive bias which the court felt resulted from the Board's make-up, largely disappears.

In the first place, as a practical matter we doubt whether a system board would ever be presented with a case where the contracting union would seek a ruling that membership in another organization, which had in fact successfully established its status in a Section 3, First (f) proceeding, failed to exempt the employee from the requirement of membership in the contracting union. However, should such a case arise, it is clear that the function of the system board would be the purely ministerial one of inquiring as to whether a Section 3, First (f) proceeding had taken place and resulted in a finding that the union in question was qualified. Such a limited function would leave no room for the operation of bias on the part of the system board even if it were presumed to be present. And finally, in the unlikely event of a system board's refusal to admit the fact of qualification which actually had been so established, its decision could unquestionably be set aside, for fraud or collusion or lack of jurisdiction in the system board, without doing any violence to the doctrine of admin-

[5]Once established, we think it immaterial for purposes of the question here involved whether the organization elects to exercise such eligibility.

istrative finality as applicable to adjustment board awards, and without requiring the reviewing court to make any independent determination on the merits of the question.

As far as this particular case is concerned, it is of course true that the system board, confronted with the absence of any Section 3, First (f) procedure establishing the qualifications of U.R.O.C., should not have undertaken independently to pass on those qualifications. But at most such action was superfluous since in the absence of a Section 3, First (f) procedure, respondent's membership in U.R.O.C. would not entitle him to the exemption of Section 2, Eleventh (c) and the corresponding provision of the union shop agreement.

Admittedly there are complicated questions with respect to the reviewability of adjustment board awards, both system and national, and the extent to which they may be made final and binding on the parties, which this Court has not had occasion to answer. (See, for example, *Whitehouse v. Illinois C. R. Co.*, 349 U.S. 366, and *Washington Terminal Co. v. Boswell*, 124 F. (2d) 235, aff'd. by divided Court at 319 U.S. 732.) But those questions, though of great importance, are not presented here, and we believe that any attempt at the lengthy analysis required for their adequate presentation would unnecessarily complicate the issues in this case and should be reserved for such time as they are brought before the Court for decision.

CONCLUSION

This case involves an attempt to obtain judicial decision of a question in the face of Congressional action providing a specific administrative procedure for determination of precisely the same question. Such a result would run counter to the recognized Congressional policy of keeping litigation at a minimum in the railroad labor field. The administrative procedure is adequate and fair, and no in-

dividual rights would be impaired by holding it to be exclusive. Such a conclusion would remove an otherwise chaotic condition, and enable all parties concerned to act with secure knowledge of their rights and liabilities. And it would raise no questions of the validity and reviewability of awards of the bi-partisan boards of adjustment long established for handling minor disputes in the railroad industry, such as the problems to which the Court of Appeals below was led by its conclusion that the statutory administrative procedure was inadequate.

Respectfully submitted,

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Dated at Toledo, Ohio, this
28th day of September, 1956.

CERTIFICATE OF SERVICE

I, Richard R. Lyman, one of the attorneys for the applicant Railway Labor Executives' Association, do hereby certify that on the .... day of September, 1956, I served the attached motion for leave to file brief as amicus curiae and brief of amicus curiae upon all parties of record herein by depositing copies thereof in the United States mails, via airmail, postage prepaid, addressed to John B. Prizer and Richard N. Clattenburg, 1740 Suburban Station Building, Philadelphia 4, Pennsylvania, and Percy R. Smith, 705 Walbridge Building, Buffalo 2, New York, attorneys for petitioner Pennsylvania Railroad Company; Henry Kaiser and Eugene Gressman, 1701 K Street, N.W., Washington, D.C., Harold J. Tillou, 701 Erie County Savings Bank Building, Buffalo, New York, and Wayland K. Sullivan, 1370 Ontario Street, Cleveland 13, Ohio, attorneys for petitioner Brotherhood of Railroad Trainmen; and Meyer Fix and Norman Spindleman, 500 Powers Building, Rochester 14, New York, attorneys for respondent N. P. Rychlik.

Richard R. Lyman